

(PRE-FILED)

By: **Delegates Pendergrass, Barkley, Barve, Howard, Hubbard, King, Love,
Mandel, Nathan-Pulliam, Owings, Petzold, Ramirez, Rosenberg, Sossi,
and F. Turner**

Requested: July 23, 2003

Introduced and read first time: January 14, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Telecommunication Service Providers - Decryption**

3 FOR the purpose of prohibiting a person from knowingly possessing, using,
4 manufacturing, distributing, transferring, selling, offering, promoting, or
5 advertising for sale, use, or distribution, an unlawful telecommunication device
6 or access code to decrypt or to facilitate the decryption of a telecommunication
7 service for a fraudulent or unlawful purpose without the express consent or
8 express authorization of the telecommunication service provider; providing an
9 exemption from certain prohibitions to certain persons who manufacture,
10 distribute, sell, possess, or use certain telecommunication devices or access
11 codes for the purpose of decrypting certain communications or
12 telecommunication services, if the telecommunication device or access code does
13 not allow a user to defraud a telecommunication service provider or otherwise
14 commit an unlawful act; modifying certain definitions; and generally relating to
15 the decryption of certain telecommunication services under certain
16 circumstances.

17 BY repealing and reenacting, with amendments,
18 Article - Criminal Law
19 Section 7-313 through 7-315
20 Annotated Code of Maryland
21 (2002 Volume and 2003 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Criminal Law**

25 7-313.

26 (a) In this part the following words have the meanings indicated.

1 (b) (1) "Manufacture" means:

2 (i) with respect to an unlawful access device:

3 1. to make, produce, or assemble an unlawful access device;

4 or

5 2. to modify, alter, program, or reprogram technology,
6 software, or a device to defeat or circumvent technology, software, or a device that is
7 used by the provider, owner, or licensee of a telecommunication service or of a data,
8 audio, or video service, program, or transmission, to protect the telecommunication,
9 data, audio, or video service, program, or transmission from unauthorized receipt,
10 acquisition, access, decryption FOR A FRAUDULENT OR UNLAWFUL PURPOSE,
11 disclosure, communication, transmission, or retransmission; and

12 (ii) with respect to an unlawful telecommunication device or access
13 code:

14 1. to make, produce, or assemble an unlawful
15 telecommunication device or access code; or

16 2. to modify, alter, program, or reprogram a
17 telecommunication device or access code to be capable of acquiring, disrupting,
18 receiving, transmitting, decrypting FOR A FRAUDULENT OR UNLAWFUL PURPOSE, or
19 facilitating the acquisition, disruption, receipt, transmission, or decryption FOR A
20 FRAUDULENT OR UNLAWFUL PURPOSE of a telecommunication service without the
21 express consent or express authorization of the telecommunication service provider.

22 (2) "Manufacture" includes knowingly to assist another in performing an
23 activity described in paragraph (1) of this subsection.

24 (c) "Telecommunication device or access code" means:

25 (1) an instrument, device, machine, equipment, technology, or software
26 that is capable of transmitting, acquiring, decrypting, or receiving telephonic,
27 electronic, data, Internet access, audio, video, microwave or radio communications,
28 transmissions, signals, or services provided by or through a cable television, fiber
29 optic, telephone, satellite, microwave, data transmission, radio, Internet-based, or
30 wireless distribution network, system, or facility;

31 (2) a part, accessory, or component of an item listed in item (1) of this
32 subsection, including a computer circuit, security module, smart card, software,
33 computer chip, electronic mechanism, or other part, component, or accessory of any
34 telecommunication device that is capable of facilitating the transmission, decryption,
35 acquisition, or reception of any type of communication, transmission, signal, or
36 service listed in item (1) of this subsection; or

37 (3) an electronic serial number, mobile identification number, service
38 access card, account number, or personal identification number used to acquire,
39 receive, use, or transmit a telecommunication service.

1 (d) "Telecommunication service" means a service provided for a fee or other
2 compensation:

3 (1) to facilitate the origination, transmission, emission, or reception of
4 signs, signals, data, writings, images, or sounds or intelligence of any nature by a
5 telephone, cellular telephone, wire, wireless, radio, electromagnetic, photoelectronic,
6 or photo-optical system; or

7 (2) by a radio, telephone, fiber optic, cable television, satellite,
8 microwave, data transmission, wireless, or Internet-based distribution system,
9 network, or facility, including electronic, data, video, audio, Internet access,
10 telephonic, microwave and radio communications, transmissions, signals, and
11 services and those communications, transmissions, signals, and services provided
12 directly or indirectly, by or through a system, network, facility, or technology listed in
13 this subsection.

14 (e) (1) "Telecommunication service provider" means a person that:

15 (i) owns or operates a fiber optic, cable television, satellite,
16 Internet-based, telephone, wireless, microwave, data transmission, or radio
17 distribution system, network, or facility; or

18 (ii) provides a telecommunication service directly or indirectly
19 using any of the systems, networks, or facilities listed in item (i) of this paragraph.

20 (2) "Telecommunication service provider" includes a person that, for a
21 fee, supplies the facility, cell site, mobile telephone switching office, or other
22 equipment or telecommunication service.

23 (f) "Unlawful access device" means an instrument, device, access code,
24 machine, equipment, technology, or software that is primarily designed, assembled,
25 manufactured, sold, distributed, possessed, used, offered, promoted, or advertised to
26 defeat or circumvent technology, software, or a device, or a component or part of any
27 technology, software, or a device used by the provider, owner, or licensee of a
28 telecommunication service or of a data, audio, or video program or transmission, to
29 protect that telecommunication, data, audio, or video service, program, or
30 transmission from unauthorized receipt, acquisition, access, decryption FOR A
31 FRAUDULENT OR UNLAWFUL PURPOSE, disclosure, communication, transmission, or
32 retransmission.

33 (g) (1) "Unlawful telecommunication device or access code" means a
34 telecommunication device or access code that has been altered, designed, modified,
35 programmed, or reprogrammed, alone or in conjunction with another
36 telecommunication device or access code, to facilitate the disruption, acquisition,
37 receipt, transmission, or decryption FOR A FRAUDULENT OR UNLAWFUL PURPOSE of
38 a telecommunication service without the express consent or express authorization of
39 the telecommunication service provider.

40 (2) "Unlawful telecommunication device or access code" includes a
41 device, technology, product, service, equipment, access code, computer software,

1 component, or part that is primarily distributed, sold, designed, assembled,
2 manufactured, modified, programmed, reprogrammed, or used to provide the
3 unauthorized access to or receipt, transmission, disruption, decryption FOR A
4 FRAUDULENT OR UNLAWFUL PURPOSE, or acquisition of a telecommunication service
5 provided by a telecommunication service provider.

6 7-314.

7 This part does not apply to:

8 (1) a law enforcement officer who possesses or uses a telecommunication
9 device or access code in the course of an official law enforcement investigation;

10 (2) a telecommunication service provider while lawfully acting in that
11 capacity; [or]

12 (3) a person who is expressly authorized by a law enforcement unit or
13 other lawful authority to:

14 (i) manufacture telecommunication devices or access codes for
15 distribution or sale to a law enforcement unit or telecommunication service provider;
16 or

17 (ii) distribute or sell telecommunication devices or access codes to
18 law enforcement units or telecommunication service providers; OR

19 (4) A PERSON WHO MANUFACTURES, DISTRIBUTES, SELLS, POSSESSES,
20 OR USES A TELECOMMUNICATION DEVICE OR ACCESS CODE FOR THE PURPOSE OF
21 DECRYPTING ANY TYPE OF COMMUNICATION, TRANSMISSION, SIGNAL, OR
22 TELECOMMUNICATION SERVICE, IF THE TELECOMMUNICATION DEVICE OR ACCESS
23 CODE DOES NOT ALLOW A USER TO DEFRAUD A TELECOMMUNICATION SERVICE
24 PROVIDER OR OTHERWISE TO COMMIT AN UNLAWFUL ACT.

25 7-315.

26 A person may not knowingly:

27 (1) possess, use, manufacture, distribute, transfer, sell, offer, promote, or
28 advertise for sale, use, or distribution, an unlawful telecommunication device or
29 access code:

30 (i) to commit a theft of telecommunication service; or

31 (ii) to receive, disrupt, transmit, decrypt FOR A FRAUDULENT OR
32 UNLAWFUL PURPOSE, acquire, or facilitate the receipt, disruption, transmission,
33 decryption FOR A FRAUDULENT OR UNLAWFUL PURPOSE, or acquisition of a
34 telecommunication service without the express consent or express authorization of
35 the telecommunication service provider;

1 (2) possess, use, manufacture, distribute, transfer, sell, offer, promote, or
2 advertise for sale, use, or distribution an unlawful access device; or

3 (3) possess, use, prepare, distribute, sell, give, transfer, offer, promote, or
4 advertise for sale, use, or distribution equipment, hardware, cables, tools, data,
5 computer software, or other components, knowing that the purchaser or a third
6 person intends to use them to manufacture an unlawful telecommunication device or
7 access code for a purpose prohibited by this part.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2004.